55TH CONGRESS, 2d Session. SENATE. REPORT No. 1328.

THEO. VON BREMSEN.

JUNE 24, 1898.—Ordered to be printed.

Mr. HAWLEY, from the Committee on Military Affairs, submitted the following

REPORT.

[To accompany H. R. 823.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 823) for the relief of Theo. von Bremsen, having duly considered the same, report it back with an amendment, and recommend that, as amended, it do pass.

The committee finds the facts to be as stated in the House report on the measure, which is adopted and appended as a part of this report.

HOUSE REPORT.

The Committee on Military Affairs, to whom was referred the bill (H. R. 823) for the relief of Theo. von Bremsen, report the same back with favorable recommendation, and adopt as a part of this report the report made on the same measure in the Fifty-fourth Congress, as follows:

[House Report No. 2945, Fifty-fourth Congress, second session.]

The Committee on Military Affairs, having considered the bill (H. R. 7295) entitled "A bill for the relief of Theo. von Bremsen," report the same favorably and recommend that it do pass.

This bill revokes the dismissal of Lieutenant von Bremsen from the service and grants him an honorable discharge.

Your committee recommend that the bill be amended by adding the following words:

"Dated December nineteenth, eighteen hundred and sixty-three: *Provided, however*, That no pay, bounty, or other allowances shall become due or payable by virtue of the passage of this act."

Lieutenant von Bremsen, after good service and promotion, was dismissed December, 1863, on court-martial, for leaving camp on Folly Island September 29, 1863, while under arrest, and going without permission to Long Island. He immediately appealed to the War Department, and the Judge-Advocate General reported that it was clear that he was not under arrest, and had a pass from the very officer that accused him; that the finding of the court is thoroughly refuted, and that the disability to reenter the service should be removed. This was done, but the President having no power to revoke the sentence, the case comes to Congress for relief.

All this appears from the official record, showing this dismissal to have been a great injustice.

Case of Theo. von Bremsen, late adjutant One hundred and third New York Volunteers.

It is shown by the records that Theodore von Bremsen enlisted December 12, 1861, in Company A, One hundred and third New York Volunteers. He was promoted to the grade of sergeant July 19, 1862, and was mustered in as second lieutenant to date November 1, 1862, and as first lieutenant November 4, 1862. He served as adjutant of the regiment from about November 1, 1862, to March 1, 1863. The muster roll of the field and staff for March and April, 1863, reports him "appointed major March 1, 1863, vice Ringgold, promoted," but it does not appear that he was commissioned or mustered into service as major. The muster roll for May and June, 1863, reports him "adjutant, absent in arrest, in camp near Portsmouth."

In October, 1863, this officer was tried by court-martial on charges of breach of arrest, disobedience of orders, and absent without leave, was found guilty, and sentenced to be cashiered. The findings and sentence were approved by the proper authority and duly promulgated December 19, 1863, in General Orders, No. 113, of that date, from the Department of the South.

On February 14, 1864, Mr. von Bremsen submitted, with an application for restoration to service, certain papers, which were referred to the Judge-Advocate-General of the Army, who, under date February 19, 1864, reported as follows:

In the case of Theodore V. Bremsen, late first lieutenant One hundred and third New York Volunteers, the following report is respectfully submitted:

"Bremsen was tried by court-martial, in the Department of the South, in October, 1863, upon three charges, viz:

"Breach of arrest.

"Disobedience of orders.

"Absence without leave.

"These charges, and the specifications under them, all related to one alleged act of the accused, namely, leaving his camp on Folly Island on September 29, while under arrest, and going without permission to Long Island.

"He was found guilty before the court of the charges, sentenced to be dismissed, and the sentence duly approved and promulgated.

"He now applies to the President to have the case reviewed, in connection with sundry documents submitted by him, and asks to be relieved from the disability under which he labors.

"The record of the trial discloses the following facts:

"It was proved by the prosecution that the accused, while under arrest by the order of his colonel, through the acting adjutant, without permission left the limits of his camp and the island on which his regiment was stationed and visited Long Island.

"The colonel swore positively that he did not grant the accused any permission to absent himself. (See record, testimony of Colonel Heine, pp. 117, 118; Lieutenant Wettstein, p. 119.)

"It was also proved that by an order from division headquarters company officers were forbidden to pass to other commands without the permission of the commander within whose limits they wished to visit, as well as of their own commander (p. 120).

"On the other hand, on the defense the acting adjutant testified that he never placed the accused in arrest (p. 121), but that the accused was under arrest on September 29 upon old charges.

"The accused also introduced in evidence a pass permitting him to visit Long Island, duly approved by his colonel and by his own division commander, but not approved by the commander whose forces he was to visit (Gordon's division). (Exhibit A.)

"There was evidence, however, that the order before mentioned had never been promulgated to the regiment of the accused (p. 123).

"It is noticeable that the acting adjutant, Brandt, testified on the trial that he never received an order to release the accused from arrest, nor was any proof introduced upon this point, yet Brandt now certifies that he regularly promulgated to the regiment on September 13 the order (upon Bremsen's acquittal on the old charges) releasing him from arrest, and a certified copy of the order is produced.

"Upon the whole evidence, therefore, it is to be observed—

"First. That the only proof that the accused was under arrest on September 29 is the oath of the colonel, whose testimony is contradicted by that of the acting adjutant and that of a sergeant (p. 123).

"Second. The charges of disobedience of orders and absence without leave are to be deemed substantially answered by the pass (Exhibit A) introduced.

"The testimonials presented with this application consist of a letter from Major-General Burnside, who regarded the accused a good officer before the court-martial; a letter from Rush C. Hawkins, formerly colonel Ninth New York Volunteers (Hawkins's Zouaves), certifying to his bravery, efficiency, and attention to duty; letter

from Brigadier-General Getty, stating that he was highly esteemed by the first colonel of the One hundred and third New York (Ringgold), who was killed at Suffolk, and a note from Hon. Ira Harris, commending him to the President.

"The opinion is expressed that in view of the additional evidence respecting the release from arrest now brought to light, but by a blundering omission not placed before the court, the findings of the court, which were before but ill sustained, must be regarded as thoroughly refuted.

"The accused desires that the disability hanging over him may be removed, in order that by accepting a new appointment and recruiting under General Burnside he may reenter the service. It is respectfully recommended that this application be granted."

Upon the report of the Judge-Advocate-General the disability to reenter the service, resulting from the dismissal of this officer, was removed, and the action of the Department communicated to the governor of New York in a letter dated April 21, 1864. This action, however, did not affect the fact of the officer's previous dismissal from the service, but was merely a declaration that the Government would not object to again receiving him into its service should the governor of his State see fit to recommission him.

In 1870 an application was made by Von Bremsen for an honorable discharge. Upon this application the Judge-Advocate-General reported as follows:

"In this case a full report was made by this Bureau to the President on February 11, 1864, in which it was held that the officer was convicted and dismissed on insufficient evidence, and it was advised that the disability imposed by his sentence of dismissal be removed by the President. It was removed accordingly, and the accused, as is understood, was about to take a new commission in the service, when the cessation of active hostilities put an end to the increase of the volunteer forces.

"The proceedings in the case having been valid in law, and the sentence duly approved by competent authority, this removal of disability was the only measure of relief in the power of the Executive. The sentence, having been long since duly executed, can not now, of course, be set aside, modified, or affected in any manner by the President, and the specific application of the party can not, therefore, legally be granted. The stigma of his dismissal has been, as far as was practicable, removed by the Executive action heretofore taken, and the case can not for any further action lawfully be reopened at this time."

Whatever injustice may have been done this officer in his dismissal from service, it is now beyond the power of the executive department of the Government to afford him any relief unless authorized by special legislative enactment.

Respectfully submitted.

F. C. AINSWORTH,
Colonel, United States Army, Chief Record and Pension Office.

RECORD AND PENSION OFFICE,
War Department, May 14, 1896.

The SECRETARY OF WAR.